

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

DANA AUSTIN and RENE YELL,

Plaintiffs,

v.

No. 12-cv-00232

DISTRIBUTION EXPRESS, INC. and
WILLIAM NICHOLS VIROSTKO,

Defendants.

**NOTICE OF REMOVAL
TO THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

To: UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

Defendants Distribution Express, Inc. and William Nichols Virostko, by and through their attorneys, Guebert Bruckner P.C., and pursuant to 28 U.S.C. §1446 and D.N.M.LR-Civ. 81.1 NMRA, move this Court to allow removal of the above-entitled action to the United States District Court for the District of New Mexico.

1. On February 2, 2012, a Complaint was filed in the Sixth Judicial District Court, County of Luna, State of New Mexico. The case was docketed as Cause No. D-619-CV-2012-00044. The Plaintiffs are Dana Austin and Rene Yell.

2. In accordance with D.N.M.LR-Civ. 81.1(a) NMRA, attached hereto are copies of all pleadings served upon Defendants in Sixth Judicial District Court No. D-619-CV-2012-00044. **(Exhibit A)**

3. The Complaint names Distribution Express, Inc. and William Nichols Virostko as Defendants.

4. Defendant Distribution Express, Inc. is no longer in business.

5. Before ceasing to conduct business, Defendant Distribution Express, Inc. operated as a foreign company with its principal place of business in Rancho Dominguez, California, a location outside the State of New Mexico.

6. Defendant Virostko is a resident of Oklahoma, as alleged in the Complaint. (**Exhibit A**, Complaint, ¶ 2)

7. The Complaint alleges that Plaintiff Dana Austin is a resident of the State of Oregon and that Plaintiff Rene Yell is a resident of Florida. (**Exhibit A**, Complaint, ¶ 1).

8. The Complaint is a civil action over which this Court has jurisdiction pursuant to 28 U.S.C. §1332 and which is removable by Defendants under the provisions of 28 U.S.C. §1441 because there is complete diversity between Plaintiffs, Dana Austin and Rene Yell, and Defendants, Distribution Express, Inc. and William Nichols Virostko, and the amount in controversy exceeds \$75,000.00 by virtue of the nature of injuries, damages, and the nature of the remedies sought by Plaintiff. (**Exhibit A**, Complaint, ¶¶ 3, 7, 8)

9. Although Plaintiffs' Complaint does not specify the dollar amount that Plaintiffs are seeking, it is reasonable to believe the amount in controversy exceeds the jurisdictional minimum amount set forth in 28 U.S.C. § 1332(a). (**Exhibit B**, Affidavit of Terry R. Guebert)

10. The Complaint asserts claims under New Mexico state law.

11. This Notice of Removal is being filed with this Court within thirty (30) days after service of the Complaint, which is the first pleading naming these Defendants.

12. Defendants, upon filing of this Notice of Removal, are giving written notice of the filing to Plaintiffs as required by 28 U.S.C. §1446(d), and are filing a copy of this Notice of Removal with the Clerk of the Sixth Judicial District Court, County of Luna, State of New Mexico, the Court from which this action is removed.

13. This Notice of Removal is signed pursuant to Fed. R. Civ. P. 11.

WHEREFORE, Defendants pray that the above-entitled action be removed from the Sixth Judicial District Court, County of Luna, State of New Mexico, to this Court.

GUEBERT BRUCKNER P.C.

By /s/ Christopher J. Supik
Terry R. Guebert
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Attorneys for Defendants

This is to certify that a copy of the foregoing Notice of Removal to United States District Court for the District of New Mexico was faxed and mailed to:

Robert Trenchard, Esq.
Trenchard & Hoskins, Attorneys at Law
414 Executive Center Blvd., Ste. 105
El Paso, TX 79902-1015
(915) 533-2837
Fax: (915) 533-3745
Attorney for Plaintiff

and filed via facsimile, as an attachment to a Notice of Filing of Notice of Removal, with:

Clerk of the Court
Sixth Judicial District Court
855 South Platinum
Deming, NM 88030-4729
Fax: (575) 543-1605

this 6th day of March, 2012.

/s/ Christopher J. Supik
Terry R. Guebert
Christopher J. Supik
Attorneys for Defendants

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